

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CHRISTOPHER M. GATES,

11 v.
12 Plaintiff,

13 KING COUNTY CORRECTIONAL
14 FACILITY *et al.*,

Defendants.

CASE NO. C19-1185-JCC

ORDER

15 This matter comes before the Court on the report and recommendation of the Honorable
16 Michelle L. Peterson, United States Magistrate Judge (Dkt. No. 11). Plaintiff is currently
17 confined at the King County Correctional Facility (“KCCF”) in Seattle, Washington. Plaintiff’s
18 amended complaint alleges that KCCF and certain individual Defendants are violating his Sixth
19 Amendment right to access the courts by denying him access to a law library that would allow
20 him to adequately prepare a *habeas* petition and 42 U.S.C. § 1983 actions. (*See* Dkt. No. 10 at 6–
21 14.) Judge Peterson recommends that the Court dismiss Plaintiff’s amended complaint without
22 prejudice because he lacks standing. (*See* Dkt. No. 11 at 4–5.) Judge Peterson bases her
23 recommendation on the following grounds: (1) Plaintiff has not identified any non-frivolous
24 claim that he may wish to pursue on collateral review of his November 2016 criminal conviction;
25 (2) Plaintiff has not persuaded Judge Peterson that the alleged deficiencies in KCCF’s legal
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1 access scheme would prevent him from meeting the March 2020 deadline for filing his
2 contemplated *habeas* petition; (3) Plaintiff's allegations regarding other contemplated § 1983
3 actions are too vague; and (4) Plaintiff's ability to present a relatively well formulated amended
4 complaint belie his claim that KCCF's purportedly deficient legal access scheme has prevented
5 him from litigating effectively in the current proceedings. (*See id.*)

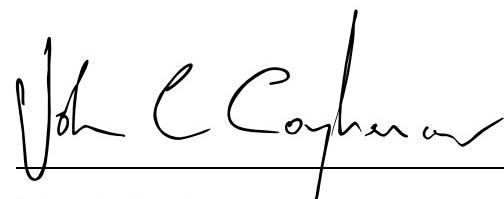
6 Plaintiff has filed objections to Judge Peterson's report and recommendation. (Dkt. No.
7 12.) Plaintiff argues that he need not identify non-frivolous claims that he wishes to pursue to
8 plead actual injury; he need only plead that KCCF's legal access scheme has prevented him from
9 effectively preparing contemplated legal actions. (*See id.* at 2–3.) In addition, Plaintiff argues
10 that he can establish actual injury even if he has not yet missed the deadline for his *habeas*
11 petition and that Judge Peterson conflates standing with the merits of his claim by requiring him
12 to prove that KCCF's legal access scheme will prevent him from filing a *habeas* petition. (*See id.*
13 at 4, 7.) Finally, Plaintiff seeks leave to amend his complaint to allege more specific facts about
14 his contemplated *habeas* petition and § 1983 actions. (*Id.* at 10.) Plaintiff argues that leave is
15 appropriate because he could cure the deficiencies in his amended complaint and because he was
16 not warned that he needed to be specific about the claims he planned to raise in his *habeas*
17 petition and his § 1983 actions. (*See id.* at 10.)

18 Having reviewed Plaintiff's amended complaint, Judge Peterson's report and
19 recommendation, Plaintiff's objections, and the relevant record, the Court concludes that at this
20 stage, Plaintiff has adequately alleged that he was injured by KCCF's legal access scheme in
21 violation of his constitutional rights. This preliminary conclusion is not, however, a decision on
22 the merits. Once Defendants are served, they are free to argue that Plaintiff lacks standing or has
23 failed to state a claim. In addition, the Court finds it appropriate to grant Plaintiff's request for
24 leave to amend his complaint to more specifically state the § 1983 actions that he is
25 contemplating and his possible grounds for relief under 28 U.S.C. § 2255. (*See Dkt. No. 12 at*
26 10.) The Court therefore ORDERS as follows:

- 1 1. Judge Peterson's report and recommendation (Dkt No. 11) is REJECTED.
2 2. Plaintiff's request for leave to amend his complaint is GRANTED. (See Dkt. No.
3 12 at 10.) Plaintiff is ORDERED to file an amended complaint within 30 days of
4 the date of this order.
5 3. Once Plaintiff has filed an amended complaint, the Clerk is DIRECTED to issue
6 and serve summons and the amended complaint pursuant to 28 U.S.C. § 1915(d).

7 DATED this 31st day of January 2020.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE